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**U.S. Department of Homeland Security**  
U.S. Citizenship and Immigration Services  
Administrative Appeals Office (AAO)  
20 Massachusetts Ave., N.W., MS 2090  
Washington, DC 20529-2090  
**U.S. Citizenship  
and Immigration  
Services**



tlg

Date: **DEC 08 2011** Office: CIUDAD JUAREZ, MEXICO FILE:

IN RE: Applicant:

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(a)(9)(B)(v) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(B)(v)

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$630. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew  
Chief, Administrative Appeals Office

**DISCUSSION:** The waiver application was denied by the Field Office Director, Ciudad Juarez, Mexico, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The AAO notes that on appeal, the applicant's husband requested 30 days to submit a brief and/or evidence to the AAO. *Form I-290B*, dated July 15, 2009. The record contains no evidence that a brief or additional evidence was filed within 30 days. On November 3, 2011, the AAO sent a letter to the applicant's husband requesting evidence of the brief and/or additional evidence, or a statement by the applicant's husband that neither a brief nor evidence was filed; however, the AAO received no reply from the applicant's husband. Therefore, the record is considered complete.

The record reflects that the applicant is a native and citizen of Mexico who was found to be inadmissible to the United States pursuant to section 212(a)(9)(B)(i)(II) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(i)(II), for having been unlawfully present in the United States for more than one year and seeking readmission within ten years of her last departure from the United States. The applicant is married to a United States citizen and the mother of three United States citizen children. She is the beneficiary of an approved Petition for Alien Relative (Form I-130). The applicant seeks a waiver of inadmissibility pursuant to section 212(a)(9)(B)(v) of the Act, 8 U.S.C. § 1182(a)(9)(B)(v), in order to reside in the United States with her spouse and children.

The Field Office Director found that the applicant had failed to establish that extreme hardship would be imposed on the applicant's qualifying relative and denied the Application for Waiver of Grounds of Inadmissibility (Form I-601) accordingly. *Decision of the Field Office Director*, dated June 30, 2009.

The applicant's spouse states he and his children are suffering hardship and they need the applicant in the United States. *Form I-290B, supra*.

The record includes, but is not limited to, statements from the applicant's husband and daughter in English and Spanish<sup>1</sup>, a letter of support for the applicant and her husband, an employment verification document for the applicant's husband, and a school record for the applicant's daughter. The entire record was reviewed and considered, with the exception of the Spanish language statement, in arriving at a decision on the appeal.

Section 212(a)(9)(B) of the Act provides, in pertinent part:

(B) Aliens Unlawfully Present.-

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<sup>1</sup> Pursuant to the regulation at 8 C.F.R. § 103.2(b)(3), an applicant who submits a document in a foreign language must provide a certified English-language translation of that document. As a statement from the applicant's husband is in Spanish and is not accompanied by English-language translations, the AAO will not consider it in this proceeding.

- (i) In general.-Any alien (other than an alien lawfully admitted for permanent residence) who-
  - . . . .
  - (II) has been unlawfully present in the United States for one year or more, and who again seeks admission within 10 years of the date of such alien's departure or removal from the United States, is inadmissible.
  - . . . .
- (v) Waiver.-The Attorney General [now the Secretary of Homeland Security, "Secretary"] has sole discretion to waive clause (i) in the case of an immigrant who is the spouse or son or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to such immigrant alien would result in extreme hardship to the citizen or lawfully resident spouse or parent of such alien.

In the present application, the record indicates that in August 2002, the applicant entered the United States without inspection. In January 2008, the applicant departed the United States.

The applicant accrued unlawful presence from August 2002, the date she entered the United States without inspection, until January 2008, when she departed the United States. The applicant is attempting to seek admission into the United States within ten years of her January 2008 departure from the United States. The applicant is, therefore, inadmissible to the United States under section 212(a)(9)(B)(i)(II) of the Act for being unlawfully present in the United States for a period of more than one year and seeking admission within 10 years of her departure from the United States.

A waiver of inadmissibility under section 212(a)(9)(B)(v) of the Act is dependent on a showing that the bar to admission imposes extreme hardship on a qualifying relative, which includes the U.S. citizen or lawfully resident spouse or parent of the applicant. Hardship to the applicant or her children can be considered only insofar as it results in hardship to a qualifying relative. The applicant's husband is the only qualifying relative in this case. If extreme hardship to a qualifying relative is established, the applicant is statutorily eligible for a waiver, and United States Citizenship and Immigration Services (USCIS) then assesses whether a favorable exercise of discretion is warranted. *See Matter of Mendez-Morales*, 21 I&N Dec. 296, 301 (BIA 1996).

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board of Immigration Appeals (Board) provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of

departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

On appeal, the applicant's husband states he is suffering from depression and is taking medicine. In a statement dated July 25, 2008, the applicant's husband states his children need to be in the United States to attend school and one of his daughters needs medical treatment. The AAO notes that other than the applicant's husband's statement, there is no medical documentation submitted establishing the applicant's

husband and/or daughter are suffering from any medical condition(s), the severity of their condition(s), what treatment is required, that treatment is unavailable in Mexico, or that they have to remain in the United States to receive treatment(s). Going on record without supporting documentation is not sufficient to meet the applicant's burden of proof in this proceeding. *See Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). However, the AAO notes the applicant's husband's concerns regarding the difficulties he and his children would face in relocating to Mexico.

The AAO acknowledges that the applicant's husband has resided in the United States for many years and that relocation abroad would involve some hardship. However, the AAO notes that the applicant's spouse is a native of Mexico and it is presumed that he would be able to adapt to the culture and language of Mexico. The AAO recognizes that the applicant's husband is employed in the United States and he would be required to give up his employment. However, the AAO notes that the record does not contain documentary evidence, e.g., country conditions reports on Mexico, that demonstrate that the applicant's husband would be unable to obtain employment upon relocation that would allow him to use the skills he has acquired in the United States. Additionally, the AAO acknowledges that the applicant's children may suffer some hardship in Mexico; however, the AAO finds that the applicant has not shown that hardship to her children will elevate her husband's challenges to an extreme level. Therefore, based on the record before it, the AAO finds that, even considering the potential hardships in the aggregate, the applicant has failed to establish that her husband would suffer extreme hardship if he relocated to Mexico.

In addition, the record also fails to establish extreme hardship to the applicant's husband if he remains in the United States. As noted above, the applicant's husband states he is suffering from depression and is taking medicine. The applicant's husband states he cannot have all of his children reside with him in the United States because of the expense of a babysitter, and because he travels out of state for work. He also states he is paying a mortgage on their home and utilities. In a statement dated March 3, 2008, the applicant's husband states he depends on the applicant. He claims that he needs the applicant to watch the children while he works out of state. In a statement dated March 13, 2008, [REDACTED] states the applicant's husband works as a floor installer, which requires him to travel to jobsites in four different states. In a statement dated March 13, 2008, the applicant's daughter states her father works out of state and she does not see him very much. She also states that she is "very lonely and sad" without the applicant, and she misses her sisters who reside in Mexico with the applicant. The AAO acknowledges that the applicant's daughter may be suffering some hardship in being separated from the applicant; however, as noted above, the AAO notes that the applicant's daughter is not a qualifying relative, and the applicant has not shown that hardship to her daughter has elevated her husband's challenges to an extreme level. However, the AAO notes the concerns for the applicant's daughter. Additionally, the AAO notes the applicant's husband's mental health and financial concerns.

The AAO acknowledges that the applicant's husband may be suffering some emotional problems in being separated from the applicant. However, the AAO notes that while it is understood that the separation of spouses often results in significant psychological challenges, the applicant has not distinguished her husband's emotional hardship upon separation from that which is typically faced by the spouses of those deemed inadmissible. Additionally, the AAO notes that the applicant's husband may experience some

financial hardship in being separated from the applicant; however, the applicant failed to submit any documentation establishing that her husband will be unable to support himself and his children in her absence. Further, the AAO notes that the applicant has submitted no evidence to establish that she is unable to obtain employment in Mexico and, thereby, reduce the financial burden on her husband. While the AAO acknowledges that acting as a single parent for children is arduous, the applicant has not shown that her children would create a burden on her husband that would elevate his difficulties to an extreme level. Based on the record before it, the AAO finds that the applicant has failed to establish that her husband would suffer extreme hardship if her waiver application is denied and he remains in the United States.

A review of the documentation in the record fails to establish the existence of extreme hardship to the applicant's husband caused by the applicant's inadmissibility to the United States. Having found the applicant statutorily ineligible for relief, the AAO finds no purpose would be served in discussing whether she merits a waiver as a matter of discretion.

In proceedings for application for waiver of grounds of inadmissibility under section 212(a)(9)(B)(v) of the Act, the burden of proving eligibility remains entirely with the applicant. *See* section 291 of the Act, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

**ORDER:** The appeal is dismissed.